IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4990 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASSOCIATED CONSTRUCTION CORPORATION

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4990 of 1995

MS MAYA N BHAVNANI for Petitioner No. 1

MR GT DAYANI for Petitioner No. 1-2

..... for Petitioner No. 2-11

MS MANISHA LAVKUMAR, ASST. GOVT. PLEADER for Respt No. 1-2

NOTICE SERVED for Respondent No. 3-5

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 15/04/2005

ORAL JUDGEMENT

1. By filing this petition, the petitioners have challenged the notices issued by the Mamlatdar, Visnagar and Mamlatdar, Mehsana, which are at Annexures 'A' and 'B' to the petition.

2. Mr. Dayani, learned advocate for the petitioners submitted that the said notices have been issued under the provisions of Bombay Land Revenue Code for recovery of Rs.36,40,114-00, but no particulars are given regarding the dues in question, as to on what basis the said amount is recoverable from the petitioners. Learned advocate for the petitioners further submitted that by the impugned notices, a restriction is also put not to transfer or alienate any immovable properties of the petitioners. Learned advocate for the petitioners submitted that the said amount is sought to be recovered from the petitioners for the alleged breach of a contract.

3. Learned advocate Mr. Dayani further submitted that the petitioner No.1 firm has already filed a substantive suit in this behalf, being Special Civil Suit No. 80 of 1987, which is pending before Civil Judge, Senior Division, Gandhinagar. It is further submitted that the State has also filed a suit before Civil Judge, Senior Division, at Surat being Special Civil Suit No. 573 of 1993, which is now transferred to Gujarat Public Works Contract Disputes Arbitration Tribunal, Gandhinagar, being case No. T.R. 3 of 1998. Mr.Dayani therefore submitted that since civil dispute is pending in connection with the same subject matter, it was not open to the Mamlatdar to take action under the Bombay Land Revenue Code. Learned advocate for the petitioner has relied upon the judgment of learned Single Judge of this Court in Special Civil Application No. 8498 of 1991, a copy of which is placed at Annexure 'E', page 37 of the compilation.

4. Ms. Manisha Lavkumar, learned Assistant Government Pleader appearing for the respondent-State submitted that a contract was entered into by the petitioner firm, and the petitioner firm has failed to fulfill the contractual obligations by not completing the work within the stipulated time eventhough substantial amount was paid to the petitioner-firm. She submitted that the Government is, therefore, entitled to recover damages from the defaulting contractor as per the terms of the contract, for not completing the work within the time stipulated due to which the Government was required to spend large amount for completion of the work. She,

however, fairly admitted that the suit of the Government is pending before the Arbitration Tribunal.

5. Considering the facts and circumstances of the case, more particularly the judgment of the learned Single Judge of this Court in Spl. C.A. No. 8498 of 1991, and considering the fact that the very issue is pending before a competent Court and the competent court will have to decide the suit by recording a finding of fact after recording evidence, it would be just and proper to direct the Arbitration Tribunal to adjudicate and decide the suit of the Government being T.R. No. 3 of 1998 on top most priority. It is required to be noted that the Government has sought to recover a large amount from the so called defaulting contractor, and it is submitted by learned counsel appearing for both the sides that the aforesaid suits pending before the Court is required to be adjudicated upon, at the earliest. Mr. Dayani has fairly submitted that his client will co-operate for early disposal of the suit before the Arbitration Tribunal and will not ask for adjournment on the ground that another suit is pending before the Civil Court. Considering the said fact, the Arbitration Tribunal is directed to dispose of T.R. No. 3 of 1998 by giving top most priority, and is directed to dispose of the suit latest by 31st August 2005. Mr. Dayani submitted that there may be an issue of jurisdiction which is required to be decided by the Tribunal. This Court would not like to express any opinion on this issue, and it will be open to the Tribunal to decide this issue also in accordance with law.

6. Mr.Dayani further submitted that as per the order passed by this Court on 21.7.1995 in this matter, the petitioners have already filed an undertaking before the trial Court not to transfer their as well as the firm's properties till the disposal of the suit. It goes without saying that such undertaking will remain in force till final adjudication of the dispute in question by the competent courts.

7. Mr. Dayani further submitted that in the meanwhile, the petitioner may also move the Civil Court or the Tribunal that both the proceedings may be consolidated and heard together. This Court would not like to express any opinion. However, if such application is filed, the same may be decided in accordance with law.

8. In the circumstances, the impugned notices at Annexures 'A' and 'B' shall not be implemented till final

disposal of T.R. No. 3 of 1998. This petition stands disposed of as partly allowed. Rule made partly absolute accordingly. No order as to costs. The interim relief granted earlier to continue till the decision of the Tribunal in the aforesaid case. Writ to be sent to the Tribunal forthwith.

mathew [P.B.MAJMUDAR, J.]